

IN THE UNITED STATES DISTRICT COURTS
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JOSEPH FOSDICK,
PLAINTIFF

v.

COMPLAINT

CIVIL ACTION NO. 7:16-CV-00231

HAROLD CLARKE : (DIRECTOR OF VA. DEPT. OF CORR.)

LESLIE FLEMING : (WARDEN: WALLENS RIDGE STATE PRISON)

[CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED]

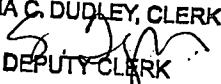
D. ANDERSON : (CHIEF OF SECURITY: W.R.S.P.)

J.J. SHORT : (SECURITY SERGEANT: W.R.S.P.)

MAY 18 2016

D.T. KENDRICK : (CORRECTIONAL OFFICER: W.R.S.P.)

DEFENDANTS

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

I. JURISDICTION & VENUE

1. THIS IS A CIVIL ACTION AUTHORIZED BY 42 U.S.C. SECTION 1983 TO REDRESS THE DEPRIVATIONS, UNDER COLOR OF STATE LAW, OF RIGHTS SECURED BY THE CONSTITUTION OF THE UNITED STATES. THE COURT HAS JURISDICTION UNDER 28 U.S.C. SECTION 1331 AND 1333 (a) (3). PLAINTIFF SEEKS DECLARATORY RELIEF PURSUANT TO 28 U.S.C. SECTION 2201 AND 2202. PLAINTIFF'S CLAIMS FOR INJUNCTIVE RELIEF ARE AUTHORIZED BY 28 U.S.C. SECTION 2283 & 2284 AND RULE 65 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

2. THE (UNITED STATES FOURTH DISTRICT) IS AN APPROPRIATE VENUE UNDER 28 U.S.C. SECTION 1331 (b)(2) BECAUSE IT IS WHERE THE EVENTS GIVING RISE TO THIS CLAIM OCCURRED.

II. PLAINTIFF

3. PLAINTIFF, (JOSEPH FOSDICK), IS AND WAS AT ALL TIMES MENTIONED HEREIN A PRISONER OF THE STATE OF VIRGINIA IN THE CUSTODY OF THE VIRGINIA DEPARTMENT OF CORRECTIONS. HE IS CURRENTLY CONFINED IN (WALLENS RIDGE STATE PRISON), IN (BIG STONE GAP, VIRGINIA).

III. DEFENDANTS

4. DEFENDANT, (HAROLD CLARKE), IS THE DIRECTOR OF THE STATE OF VIRGINIA'S DEPARTMENT OF CORRECTIONS. HE IS LEGALLY RESPONSIBLE FOR THE OVERALL OPERATION OF THE DEPARTMENT AND EACH INSTITUTION UNDER ITS JURISDICTION, INCLUDING (WALLENS RIDGE STATE PRISON).

5. DEFENDANT (LESLIE FLEMING) IS THE WARDEN OF (WALLENS RIDGE STATE PRISON). HE IS LEGALLY RESPONSIBLE FOR THE OPERATIONS OF (WALLENS RIDGE STATE PRISON) AND FOR THE WELFARE OF ALL THE INMATES IN THAT PRISON.
6. DEFENDANT (D. ANDERSON) IS THE (MAJOR/CHIEF OF SECURITY) OF (WALLENS RIDGE STATE PRISON). HE IS LEGALLY RESPONSIBLE FOR THE SECURITY OF (WALLENS RIDGE STATE PRISON), AND ENSURING THAT THE CORRECTIONAL OFFICERS THAT WORK AT (WALLENS RIDGE STATE PRISON) PERFORM THEIR DUTIES AS PROFESSIONALS IN COMPLIANCE WITH PROPER POLICY & PROCEDURE AS WELL AS STATE & FEDERAL LAWS.
7. DEFENDANT (J.J. SHORT) IS A (SECURITY SERGEANT) OF THE VIRGINIA DEPARTMENT OF CORRECTIONS WHO, AT ALL TIMES MENTIONED IN THIS COMPLAINT, HELD THE RANK OF (CORRECTIONAL OFFICER) AND WAS ASSIGNED TO (WALLENS RIDGE STATE PRISON).
8. DEFENDANT (D.T. KENDRICK) IS A CORRECTIONAL OFFICER OF THE VIRGINIA DEPARTMENT OF CORRECTIONS WHO, AT ALL TIMES MENTIONED IN THIS COMPLAINT, HELD THE RANK OF (CORRECTIONAL OFFICER) AND WAS ASSIGNED TO (WALLENS RIDGE STATE PRISON).

IV. FACTS

9. ON FRIDAY, MARCH 27, 2015 I WAS PARTICIPATING IN (OUTSIDE RECREATION) AT (WALLENS RIDGE STATE PRISON). IT WAS VERY WET AND MUDGY OUTSIDE BECAUSE IT HAD BEEN RAINING. WHILE I WAS PARTICIPATING IN THE (OUTSIDE RECREATIONAL ACTIVITIES) A FIGHT DID BREAK OUT BETWEEN (2) OTHER INMATES. I WAS NOT INVOLVED IN THE FIGHT.
10. AS SOON AS THE FIGHT WAS RECOGNIZED BY THE OFFICERS, ALL INMATES WERE INSTRUCTED TO LAY ON THE GROUND.
11. I DID NOT WANT TO LAY IN THE MUD AND GET MY CLOTHING AND MYSELF ALL MUDGY, SO I STEPPED TO THE WALL OF THE BUILDING, FLATTENED MYSELF AGAINST THE BUILDING (FACE FIRST) AND SPREAD MY ARMS AND LEGS AS FAR AS THEY WOULD GO IN ORDER TO SHOW THE OFFICERS THAT I POSED NO THREAT. THE SECURITY CAMERA FOOTAGE FOR 3-27-15 WILL PROVE ALL OF THIS.
12. BEING THAT I DID NOT LAY ON THE GROUND AS INSTRUCTED, OFFICER J.J. SHORT AND OFFICER D.T. KENDRICK WERE INSTRUCTED TO HANDCUFF ME AND ESCORT ME TO SEGREGATION. (THE SECURITY CAMERA FOOTAGE WILL PROVE THAT AT THE TIME THESE (2) OFFICERS REMOVED ME FROM THE RECREATION YARD, I HAD NO FACIAL INJURIES AT ALL).
13. OFFICER J.J. SHORT AND OFFICER D.T. KENDRICK ESCORTED ME TO (SEGREGATION HOLDING POD D-1) AND PLACED ME IN A SHOWER TO BE STRIPPED SEARCHED. (THE POD-D-1 SECURITY CAMERA FOOTAGE) FOR (3-27-16) WILL PROVE I HAD NO FACIAL INJURIES WHEN OFFICERS TOOK ME IN (POD D-1).

14. AFTER STRIP SEARCHING PLAINTIFF, OFFICER J.J. SHORT AND D.T. KENDRICK DID RE-HANDCLIFF AND SHACKLE PLAINTIFF, THEN ESCORTED PLAINTIFF FROM THE (POD D-1 SHOWER, TO CELL 201 IN POD D-2). THE (POD D-1 SECURITY CAMERA FOOTAGE FOR 3-27-15) WILL PROVE PLAINTIFF HAD NO FACIAL INJURIES UPON LEAVING POD D-1. THE (POD D-2 SECURITY CAMERA FOOTAGE FOR 3-27-15) WILL PROVE PLAINTIFF HAD NO FACIAL INJURIES UPON ENTERING POD D-2 ON 3-27-15).
15. UPON ENTERING CELL# 201, OFFICER J.J. SHORT HAD ME GET DOWN ON MY KNEES SO THE SHACKLES COULD BE REMOVED, AS SOON AS I WAS ON MY KNEES OFFICER J.J. SHORT HIT ME IN MY FACE WITH HIS FIST. THEN OFFICER D.T. KENDRICK HELD MY HANDCUFFED HANDS BEHIND MY BACK WHILE OFFICER J.J. SHORT CONTINUED TO HIT ME IN MY FACE ABOUT A DOZEN TIMES. AS OFFICER J.J. SHORT WAS LEAVING ME LAYING IN THE CELL FLOOR, HE SAID IF I PUSH THIS ISSUE, I'LL FIND OUT THAT THE CAMERA'S NEVER WORK WHEN THE INMATES NEED THEM TO.
16. PHONE RECORDS WILL PROVE THAT I HAD TO CALL THE (P.R.E.A. HOTLINE #55) WHICH IS THE (PRISON RAPE ELIMINATION ACT HOTLINE) TO REPORT THIS ASSAULT IN ORDER TO GET MEDICAL ATTENTION BECAUSE (W.R.S.P. STAFF) WAS (DELIBERATELY INDIFFERENT) TO MY MEDICAL NEEDS. I CALLED THE (P.R.E.A. HOTLINE) ON 3-29-15.
17. ONCE I WAS TAKEN TO MEDICAL WHERE THE DAMAGE TO MY FACE COULD BE SEEN, I WAS KEPT IN MEDICAL SO MY FACE COULD BE X-RAYED (EXHIBIT-6), AND SO MY FACE COULD HEAL UNDER MEDICAL SUPERVISION. UPON LEAVING MEDICAL, PICTURES WERE TAKEN OF MY FACE.
18. PLAINTIFF CLAIMS (HAROLD CLARKE) AND (LESLIE FLEMING) ARE RESPONSIBLE FOR THE ACTIONS OF THESE OFFICERS AND ARE SUBJECT TO SUPERVISORY LIABILITY FOR THE USE OF EXCESSIVE FORCE AND SUBJECTING PLAINTIFF TO CRUEL AND UNUSUAL PUNISHMENT. (EXHIBITS #A #B #C #D AND #E) PROVES THESE SUPERVISORS HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE THAT THEIR SUBORDINATES WERE ENGAGED IN CONDUCT THAT POSED A PERVERSIVE AND UNREASONABLE RISK OF CONSTITUTIONAL INJURY TO THE PLAINTIFF. ALSO THE SUPERVISORS RESPONSE TO THAT KNOWLEDGE WAS SO INADEQUATE AS TO SHOW DELIBERATE INDIFFERENCE TO OR TACIT AUTHORIZATION OF THE OFFENSIVE CONDUCT. ALSO THAT THERE IS AN AFFIRMATIVE CASUAL LINK BETWEEN THE SUPERVISORS INACTION AND THE PARTICULAR CONSTITUTIONAL INJURY SUFFERED BY PLAINTIFF.
19. (MAJOR ANDERSON) IS ALSO RESPONSIBLE UNDER SUPERVISORY LIABILITY JUST LIKE (HAROLD CLARKE) AND (LESLIE FLEMING). MAJOR D. ANDERSON OVER LOOKING THE UNLAWFUL CONDUCT OF OFFICERS J.J. SHORT AND D.T. KENDRICK IS PERIODICALLY WHEN MAJOR D. ANDERSON AND ASST. WARDEN CAMBS WERE BOTH ACCUSED OF, AND FOUND LIABLE FOR BEATING AN INMATE NAMED (TALBERT) IN 2005. PLEASE SEE: (JO'NATHAN TALBERT V. W. SMITH et al., 2007 WL 773908).

V. EXHAUSTION OF LEGAL REMEDIES

20. PLAINTIFF (JOSEPH FOSNICK) USED THE PRISONER GRIEVANCE PROCEDURE AVAILABLE AT (WALLENS RIDGE STATE PRISON) TO TRY AND SOLVE THE PROBLEM. ON (4-22-15) PLAINTIFF (JOSEPH FOSNICK) PRESENTED THE FACTS RELATING TO THIS COMPLAINT. ON (5-13-15) PLAINTIFF (JOSEPH FOSNICK) WAS SENT A RESPONSE SAYING THAT THE GRIEVANCE HAD BEEN DENIED. ON (5-15-15) HE FILED AN APPEAL. PLEASE SEE: (EXHIBITS #A #B #C #D #E) THAT PROVE EXHAUSTION OF ALL PRISON REMEDIES.
21. THE BEATING INFILCTED UPON PLAINTIFF BY OFFICER J.J. SHORE AND OFFICER D.T. KENDRICK, AND THE DELIBERATE INDIFFERENCE TO PLAINTIFF'S MEDICAL NEEDS BY THESE SAME OFFICERS AFTER THE BEATING TOOK PLACE, VIOLATED PLAINTIFF (JOSEPH FOSNICK'S) RIGHTS AND CONSTITUTED (CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AS WELL AS A DENIAL OF EQUAL PROTECTION OF THE LAW, AND DUE PROCESS OF THE LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION).
22. THE PLAINTIFF HAS NO PLAIN, ADEQUATE OR COMPLETE REMEDY AT LAW TO REDRESS THE WRONGS DESCRIBED HEREIN. PLAINTIFF HAS BEEN AND WILL CONTINUE TO BE IRREPARABLY INJURED BY THE CONDUCT OF THE DEFENDANTS UNLESS THIS COURT GRANTS THE DECLARATORY AND INJUNCTIVE RELIEF WHICH PLAINTIFF SEEKS.

VI. PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF RESPECTFULLY PRAYS THAT THIS COURT ENTER JUDGEMENT GRANTING PLAINTIFF:

23. A DECLARATION THAT THE ACTS AND OMISSIONS DESCRIBED HEREIN VIOLATED PLAINTIFF'S RIGHTS UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES.
24. A PRELIMINARY AND PERMANENT INJUNCTION ORDERING DEFENDANTS (HAROLD CLARKE) & (LESLIE FLEMING) & (D. ANDERSON) TO STOP ALLOWING THE OFFICERS AT (WALLENS RIDGE STATE PRISON) THE PRIVILEGE OF PHYSICALLY ABUSING INMATES ANY TIME THEY LIKE.
25. COMPENSATORY DAMAGES IN THE AMOUNT OF (\$2000.00) AGAINST EACH DEFENDANT JOINTLY AND SEVERALLY.
26. PUNITIVE DAMAGES IN THE AMOUNT OF (\$3000.00) AGAINST EACH DEFENDANT.
27. A JURY TRIAL ON ALL ISSUES TRIABLE BY JURY.
28. PLAINTIFF'S COST IN THIS SUIT.

29. ANY ADDITIONAL RELIEF THIS COURT SEEKS JUST, PROPER, AND
EQUITABLE.

DATE: 5/15/16

Joseph Fosdick
JOSEPH FOSDICK #1371986

W.R.S.P.
PO BOX 759
BIG STONE GAP, VA. 24219

"VERIFICATION"

I HAVE READ THE FOREGOING COMPLAINT AND HEREBY VERIFY THAT THE MATTERS ALLEGED THEREIN ARE TRUE, EXCEPT AS TO MATTERS ALLEGED ON INFORMATION AND BELIEF, AND, AS TO THOSE, I BELIEVE THEM TO BE TRUE. I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AT (WALENS RINGE STATE PRISON) IN BIG STONE GAP, VA. ON
5/15 DAY OF 2016.

Joseph Fosdick
JOSEPH FOSDICK #1371986